

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS
Civil Action Number: 2005 CV 10488 JLA

TIMOTHY HILLS,

Plaintiff

VS.

TOWN OF STOUGHTON,

DAVID M. COHEN, Individually and
MANUEL CACHOPA, Individually

Defendants

**MEMORANDUM IN SUPPORT OF JOINT MOTION TO
EXTEND THE TRACKING ORDER**

Background

On December 9, 2004, the plaintiff filed a Verified Complaint in the Norfolk Superior Court naming the Town of Stoughton as a defendant and alleging civil rights violations, harassment, false imprisonment, infliction of emotional distress, assault, battery, invasion of privacy and deceit and fraud stemming from an incident that occurred in April 2002. The Town answered the complaint on March 16, 2005. On September 13, 2005, the plaintiff amended the complaint and named David Cohen and Manuel Cachopa, the Chief of Police for the Town of Stoughton. The amended complaint raises the same allegations against David Cohen as contained in the original complaint.

The Attorney General's office assigned a special prosecutor to investigate the allegations and David Cohen has been placed on paid suspension pending the investigation. David Cohen

has been criminally charged and a criminal case is pending. David Cohen's criminal trial is scheduled to begin in February 2007. Manuel Cachopa's criminal trial is also scheduled to begin in February 2007

In light of the criminal proceedings pending, this court recently issued a protective order prohibiting David Cohen and Manuel Cachopa from responding to discovery on this civil case. Also, the parties have agreed that the plaintiff need not respond to the individual defendants' discovery until resolution of the criminal matter.

Argument

The courts have recognized that the Fifth Amendment privilege against self-incrimination "applies alike to civil and criminal proceedings, whenever the answer might tend to subject to criminal responsibility him who gives it." McCarthy v. Arndstein, 266 U.S. 34, 40, 45 S. Ct. 16, 17, 69L. Ed. 158 (1924).

This court has further acknowledged the defendants' rights against self-incrimination by issuing a protective order so that neither David Cohen nor Manuel Cachopa are required to provide discovery in the present civil case until the criminal matter is resolved.

The parties rights to conduct discovery in the civil case should not, however, be hindered or precluded because of the underlying criminal matter.

In further support of this motion, the parties state the following:

1. Discovery in this matter has not been completed and has been stayed pending the resolution of the criminal case against Mr. Cohen and Mr. Cachopa;
2. The parties all assent to this motion;
3. No party will be prejudiced by the amendment to the tracking order.

Conclusion

The parties respectfully request that the tracking order to be amended and the discovery deadline be extended and a status conference be scheduled on a date after the criminal matters have concluded.

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I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants upon receipt of notification of same from the court.

/s/ John F. Gleavy

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